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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

**STATE FARM FIRE AND CASUALTY
COMPANY**, an Illinois company,

Plaintiff,

v.

DOUBLE R BUILDERS CORPORATION,
an Oregon corporation; and **APEX
ELECTRIC LLC**, an Oregon limited liability
company,

Defendants.

NO. 6:17-cv-34

COMPLAINT

(Declaratory Judgment)

For its Complaint against defendants Double R Builders Corporation (“Double R”) and Apex Electric LLC (“Apex”), Plaintiff alleges as follows:

PARTIES

1. Plaintiff State Farm Fire and Casualty Company (“State Farm”) is an Illinois company with its principal place of business located in Bloomington, Illinois. At all relevant times, State Farm has been licensed and registered to write certain lines of insurance in Oregon.

2. Double R is an Oregon corporation with its principal place of business located in Bend, Oregon.

3. Apex is an Oregon limited liability company with its principal place of business located in Bend, Oregon.

JURISDICTION AND VENUE

4. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332, the federal diversity jurisdiction statute.

5. The amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

6. Venue is proper in this court under 28 U.S.C. § 1391(b) because the defendants are domiciled in this District, because a substantial part of the events giving rise to the claim occurred in this District, because a substantial part of the property that is the subject of the action is situated in this District, and because the insurance was issued in this District.

THE RELEVANT INSURANCE POLICY

7. State Farm issued policy number 97-BT-V373-2 to named insured Apex Electric LLC with effective dates from February 21, 2014 until February 21, 2015 (the “2014 Policy”).

8. State Farm issued policy number 97-BS-A468-8 to named insured Apex Electric LLC with effective dates from February 21, 2015 until February 21, 2016 (the “2015 Policy”).

9. State Farm issued policy number 97-B2-R009-4 to named insured Apex Electric LLC with effective dates from February 21, 2016 until February 21, 2017 (the “2016 Policy”).

10. Double R is not a named insured or an additional insured on the 2014 Policy, the 2015 Policy or the 2016 Policy.

COMMON ALLEGATIONS

11. Upon information and belief, Double R was plead into Deschutes County Circuit Court of the State of Oregon case number 16CV08104, titled *Cryo-Tech, Inc. v. JKC Bend, LLC* (the “Underlying Lawsuit”), as a Third-Party Defendant. The Third-Party Complaint was filed with the Court on May 27, 2016.

12. Upon information and belief, on August 12, 2016 Double R filed with the Court a Fourth-Party Complaint against Apex, among others, in the Underlying Lawsuit.

13. Upon information and belief, the Underlying Lawsuit was originally filed by Cryo-Tech, Inc., who was the tenant in a commercial lease, against its landlord, JKC Bend, LLC, for improper landlord improvements.

14. Upon information and belief, JKC Bend, LLC had, in January 2014, entered into a contract with Double R, which had an initial contract price of \$521,274, for Double R to act as the general contractor on the landlord improvements.

15. Upon information and belief, Double R contracted with Apex for the labor, materials and equipment to install the electrical equipment and related components that were part of the landlord improvements.

16. Upon information and belief, other work was performed by other subcontractors of Double R, and at least some of these contractors were also named as Fourth-Party defendants in the Underlying Lawsuit.

17. Upon information and belief, Cryo-Tech took occupancy of the leased premises on April 25, 2014 and claims to have begun to discover construction defects in the landlord improvements in June 2014.

18. Cryo-Tech claims that the repair of the construction defects will cost no less than \$720,000 and that it incurred other business losses.

19. JKC Bend claims that any liability it is found to have in the Underlying Lawsuit should be passed to Double R.

20. The defense of Apex was tendered to State Farm on September 7, 2016.

21. By a letter dated September 27, 2016, State Farm accepted the defense of Apex in the Underlying Lawsuit under a full reservation of rights.

22. The defense of Double R was tendered to Apex and State Farm by a letter dated August 29, 2016.

23. By a letter dated September 8, 2016, State Farm informed Double R that it could not accept Double R's tender of the Underlying Lawsuit.

FIRST CLAIM FOR RELIEF

(DECLARATORY JUDGMENT)

24. State Farm incorporates by reference all allegations set forth above.

25. An actual controversy exists between State Farm, Double R and Apex regarding whether State Farm has a duty to defend either Double R or Apex in the Underlying Lawsuit under the 2014 Policy, the 2015 Policy and/or the 2016 Policy. Namely, State Farm does not believe it owes a duty to defend either Double R or Apex, but each defendant apparently believes it is owed a defense from State Farm.

26. Pursuant to 28 U.S.C. § 2201, State Farm is entitled to a declaration by this Court of its rights and duties related to the defense of Double R and Apex in the Underlying Lawsuit under the 2014 Policy, the 2015 Policy and/or the 2016 Policy.

WHEREFORE, Plaintiff prays for judgment as follows:

1. a declaration that State Farm does not owe Double R a defense in the Underlying Lawsuit under the 2014 Policy, the 2015 Policy and/or the 2016 Policy;
2. a declaration that State Farm does not owe Apex a defense in the Underlying Lawsuit under the 2014 Policy, the 2015 Policy and/or the 2016 Policy; and
3. for such other relief that the Court deems just and proper.

DATED this 9th day of January, 2017.

BETTS, PATTERSON & MINES, P.S.

By /s David Rossmiller

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